

Tenure of Land (Ireland) Bill.

ARRANGEMENT OF CLAUSES.

Clause.

1. No rent to be made payable on improvements by tenant.
 2. Presumption in respect of improvements.
 3. Postponement of creation of future tenancies.
 4. Statutory term seven years.
 5. Stay of proceedings in certain cases, and power of court to deal with arrears.
 6. Restitution of possession.
 7. Leaseholders.
 8. Turbary.
 9. Proof of right to turbary.
 10. Bog rents to be separable from other judicial rents.
 11. Applications with regard to turbary after judicial rent fixed.
 12. Power to increase judicial rents in certain cases.
 13. Seaweed.
 14. Mining rights and royalties.
 15. Arbitration.
 16. Hearing of applications to fix fair rents.
 17. Appeal.
 18. New trial.
 19. Definitions.
 20. Act and Acts of 1851 and 1857 one Act.
 21. Repeal.
 22. Short title.
-

A

B I L L

FOR

The amendment of the Law relating to the Tenure and
Occupation of Land in Ireland.

A.D. 1890.

WHEREAS it is expedient further to amend the law relating to the tenure and occupation of land in Ireland :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and
5 Temporal and Commons in this present Parliament assembled, and by the authority of the same, as follows :

L.—(1.) Where in pursuance of the Land Law (Ireland) Acts, 1881 and 1887, any application has been made to the court in the said Acts mentioned to fix the fair rent of a holding, the court shall ascertain
10 whether any improvements have been made thereon by the tenant or his predecessors in title for which he or they have not been paid or otherwise compensated by the landlord or his predecessors in title, and shall estimate the extent of any increase in the letting value of such holding resulting from such improvements. Such
15 increase of letting value shall, for the purposes of any such application, be deemed to be the property of the tenant, and no rent shall, in any proceedings under the said Acts or this Act, be allowed or made payable in respect thereof.

No rent to be made payable on improvements by tenant.

(2.) The subsequent use and enjoyment by the tenant or his predecessors in title of any improvements executed wholly or partially by him or them, or the forbearance of the landlord to charge an increased rent in respect thereof, or to evict the tenant or his predecessors in title from the holding, shall not of itself, in the absence of an express contract on the subject, be deemed a compensation
25 for such improvements within the meaning of the said Acts or of this Act.

(3.) So much of the fourth section of the Landlord and Tenant (Ireland) Act, 1870, as enacts that in awarding compensation to a tenant in respect of such improvements as are therein mentioned

[Bill 3.]

A 2

A.D. 1890. the court therein mentioned shall, in reduction of the claim of the tenant, take into consideration the time during which such tenant may have enjoyed the advantage of such improvements, shall be and the same is hereby repealed.

Presumption
in respect
of improve-
ments.

2. On any application to fix the fair rent of a holding, and for the purpose of all proceedings under this Act and under the said Acts, all improvements on such holding executed within a period of fifty years prior to the *passing of this Act* shall, until the contrary is proved, be deemed to have been made by the tenant or his predecessors in title.

Postponement of
creation of
future
tenancies.

3. Notwithstanding anything contained in the fifty-seventh section of the Land Law (Ireland) Act, 1881, any tenancy created before the *first day of January one thousand eight hundred and eighty-eight* shall be deemed to be a present tenancy within the meaning of the said Act, and "future tenancy" shall be construed to mean a tenancy beginning after that date.

Statutory
term seven
years.

4. A tenancy subject to statutory conditions under the Land Law (Ireland) Act, 1881, shall be deemed to be subject to such conditions for a term of *seven years* from its commencement, and shall expire at the end of a period of seven years from such commencement notwithstanding any provision to the contrary in the said Act, provided that if such statutory term of any judicial tenancy shall have commenced on any date previous to the *first day of January one thousand eight hundred and eighty-six*, it shall be deemed to have expired immediately after the *passing of this Act*.

Stay of pro-
ceedings in
certain cases,
and power
of court to
deal with
arrears.

5. When an application is lodged with the court to fix a fair rent, it shall be in the power of the court, either under the same or under another application of the tenant, to stay all proceedings for the removal of the tenant in respect of nonpayment of rent till the said application is finally determined, upon such terms as to payment of rent or otherwise as the court shall think fit. In the proceedings on such application the court shall take an account of the amount of rent due or become due before the application is finally determined, and also of the value of the tenant's interest and of his improvements, as provided under section one of this Act, and may set off the value of such improvements, or so much thereof as may be necessary, against such arrears or an equal amount thereof, and may take evidence of all the circumstances which have led to such arrears, and shall decide whether in view of such circumstances the whole or what part of such arrears ought to be paid, and

A.D. 1880

whether in one payment, or by means of such set-off as herein-
before mentioned, or by instalments, and at what dates the same
should be paid; and where the amount is so fixed and made pay-
able by instalments, the amount and dates so fixed shall be deemed
to be the total amount of arrears due by the tenant, and the dates
at which the same became payable.

Restitution
of posses-
sion.

6. Where such proceedings for the eviction or removal of the
tenant, as in the section mentioned, have been taken, and no such
application to the court with respect to a stay of proceedings, or a
taking of accounts between the landlord and tenant, as in the last
section provided, had been made, or where the tenancy has been
put an end to by notice under section seven of the Land Law
(Ireland) Act, 1887, but the tenant has not actually removed from
possession, or has been reinstated after such removal, or where
though the tenant has been removed the holding remains in the
possession of the landlord, and in all cases within six months of his
actual eviction from his holding, it shall be lawful for the tenant
upon payment into court of six months rent to apply to the court
to take such accounts between him and his landlord as in the last
section provided, and to make such order as to set off, reduction of
arrears, and payment by instalments, as therein provided, and to
grant him a restitution of possession in the manner provided by the
Landlord and Tenant Law Amendment Act (Ireland), 1860,
wherever by the set-off which the tenant is entitled to claim under
the last section, or by such other allowances and reductions as the
court may think just to make, under the authority of the said
section, the amount of arrears due by the said tenant is entirely
cancelled, or has been reduced to an amount which, if ascertained
at the time of the institution or hearing of such proceedings for the
eviction or the removal of the tenant from possession, would have
been insufficient in law to support such proceedings.

Lease-
holders.

7. At any time within two years after the passing of this Act,
any leaseholder within the provisions of section one of the Land
Law (Ireland) Act, 1887, shall be at liberty to apply to the court
as therein provided, and shall be entitled to the benefit of the pro-
visions in the said section contained, whether his lease be one
expiring within ninety-nine years as mentioned in the said section,
or any longer term of years after the passing of the Land Law
(Ireland) Act, 1881, anything in the said section to the contrary
notwithstanding.

Turbary.

8. When any application is made to the court to fix a fair rent
according to the provisions of the Land Law (Ireland) Act, 1881,

A.D. 1890

or of any Act amending the same in respect of any holding, the court shall in every case inquire as to the rights, customs, licenses, or usages of common, of turbary, or other commonable rights which have been enjoyed in the course of the customary management of the estate by the occupier of the holding, and if it shall appear to them that such rights were considered as attached to such holding, and that the occupier would have a reasonable expectation of continuing in the enjoyment of any such rights of turbary or other commonable rights if he had not applied to the court, then the court shall make an order granting him a right of 10
turbary or other commonable right to such extent and under such conditions as to the court may seem just, and such right shall thereafter be deemed to be for all purposes appurtenant to the said holding.

Proof of
right to
turbary.

9. From and after the *passing of this Act* any occupier of land 15
in Ireland claiming any common of turbary or any right of turbary as appurtenant to such land or as annexed or belonging thereto, or used or enjoyed therewith, or as included in the right of tenancy of such occupier in any manner whatsoever, having proved to the satisfaction of the court or judge that the occupiers of such land 20
have in the course of the customary management of the estate of which such land forms a part enjoyed either for a period of twelve years last before the commencement of the action or for six years ending in the year *one thousand eight hundred and eighty-one*, the right claimed, or any such like right, custom, license, or usage of 25
turbary on any part or parts of the same estate, the court or judge may thereupon either give judgment for the claimant, with costs, or make such other order as in all the circumstances of the case may seem just.

Bog rents
to be separ-
able from
other ju-
dicial rents.

10. In fixing the fair rent the court shall have power to take 30
into account any rights of turbary granted by it under section nine, but if it shall appear to the court that there is not on or connected with the estate a sufficient amount of turf bog left or still remaining to allow of the full exercise of all rights of turbary for the full period of seven years at least, then the court shall deduct and set 35
apart from the judicial rent a proportionate sum, as the rent due in regard to turbary, which shall be called bog rent, and the said bog rent shall be payable for so many years only as the said turbary shall be available or as the court may direct: Provided always, that when such bog rents are made payable for a term, the tenant shall 40
be entitled to the turbary so granted only so long as the said bog rent continues to be payable.

11. The tenant of any holding as to which a judicial rent has been determined under the provisions of the Land Law (Ireland) Act, 1881, in addition to the powers provided for in section seventeen of the said Act, shall at any time be entitled to apply to the court in the manner for the time being prescribed, to declare the right of turbary, if any, belonging to his holding, and if on the hearing of any such application it be proved to the satisfaction of the court that the tenant has in connexion with or after his application to fix a judicial rent been refused the enjoyment of any turbary as to the continuance of which he had had such a reasonable expectation as herein-before set forth, then the court may make an order granting to him a right of common of turbary as in the same section provided in the same manner as if proceedings for the determination of a judicial rent were still pending.

A.D. 1890.

Applications with regard to turbary after judicial rent fixed.

12. Where any set-off has been allowed of the value of improvements against arrears of rent as in section five provided, or where in the case of any order under the last preceding section it shall appear that the actual or probable refusal of turbary was brought expressly to the notice of the court at the time of fixing the judicial rent for the holding, and that such rent was in fact fixed on the basis of such refusal, then the court may add to the judicial rent such an increase as under the circumstances shall be just, and such increase shall thereafter be deemed for all purposes part of the judicial rent so determined as aforesaid.

Power to increase judicial rents in certain cases.

13. From and after the passing of this Act the right of gathering seaweed in all tidal waters and on the foreshore thereto adjoining shall be and is hereby declared to be a commonable right appurtenant and belonging to the inhabitants of the several townlands abutting on or adjoining to such foreshore, or in case of adjacent but not immediately abutting or adjoining townlands to such of the inhabitants thereof as reside within one mile of high-water mark on the said foreshore. And the right of all such inhabitants to proceed upon the said foreshore or into the tidal waters thereto adjoining for the purpose of gathering and carrying away such seaweed shall be unquestionable any usage or custom to the contrary notwithstanding.

Seaweed.

14. Where after the passing of this Act land is conveyed under the provisions of the Act forty-eight and forty-nine Victoria, chapter seventy-three, or of any Act continuing or amending the same, the conveyance of such land by the Land Commission to the purchasers thereof shall contain a reservation and grant to Her Majesty's Commissioners of Woods and Forests of the rights to all mines and

Mining rights and royalties.

A.D. 1880.

minerals thereunder, with exception of quarries, clay, sand, and marl beds, and wells and water springs and such minerals as lie or may be found within twenty feet of the surface of the soil. And such Commissioners shall receive and hold the rents, royalties, and revenues accruing or to accrue from such mining rights as revenue arising from Irish land for such purposes as Parliament may from time to time direct.

Arbitration.

15. Whenever any application has been made to the court under sections five and six of this Act, and such application is made at the same time or concurred in by five or more tenants of the same landlord, the court is hereby empowered to refer to arbitration any question or questions in dispute under such applications which it may consider fit, or which the parties may be willing to submit to such arbitration. In such case the matters in dispute may be referred to one or more persons chosen and agreed to by the parties, or, if the parties cannot agree in the choice of an arbitrator or arbitrators, then to two arbitrators, one of whom may be named by the landlord, and the other by or on behalf of the tenants, with an umpire to be chosen and selected by such arbitrators before they proceed to such arbitration, or named by the court in case they cannot agree in the choice of such umpire.

The decision of such arbitrators or umpire shall be and be entered as the decree, finding, and decision of the court, or shall be and be considered as found and decided by the court in any decree or judgment which it may pronounce in regard to such applications as aforesaid, or to the matters in dispute therein.

Hearing of applications to fix fair rents.

16. Whenever in any division of a county or district in and for which a county court judge usually holds the quarterly or other periodical sittings of his court, or a sub-commission for the fixing of fair rents had been previously held, there has been entered for hearing a list of one hundred cases or upwards, or whenever upon the list of cases so entered any case standing in its regular order has been ready for adjudication and awaiting trial for a period of twelve months, then the Land Commission under the powers conferred upon them by the Land Law (Ireland) Act, 1881, shall delegate or appoint a sub-commission to proceed at once to such division or district, and there sit for the hearing or determination of the cases then standing upon any such list.

Appeal.

17. From and after the passing of this Act every decree, order, or decision of such sub-commissioners or sub-commission courts acting or exercising jurisdiction under this Act or the said Land Acts of 1881 and 1887, shall in all matters of law be subject to the like appeal as is granted by section thirty-one of the Land Law (Ireland)

Act of 1887, where such decree, order, or decision is that of the county court judge within the limits of whose jurisdiction, district, or county such decree, order, or decision has been made or pronounced.

A.D. 1890.

- 5 18. In all appeals from the decisions of county courts, sub-commissions, or other courts of first instance under this Act or the said Land Acts, to the judges of assize or land commission sitting as courts of appeal for the re-hearing and reviewing of such decisions, where the decision, finding, or adjudication appealed
10 against or a material part thereof is a decision, finding, or adjudication of a matter of fact depending and determinable upon the evidence of witnesses; if the said commission or judge of assize be of opinion that such decision or adjudication is without evidence or contrary to the weight of evidence or otherwise justly and legally
15 deserving of reconsideration and review, in all such cases, such commission court or court of assize shall remit such case for a new trial before the county court judge or a sub-commission having jurisdiction in the premises, and shall not themselves proceed to try and determine such matters of fact by way of a re-hearing or
20 otherwise anything in the Land Law (Ireland) Act, 1881, or in the Land Law (Ireland) Act, 1887, to the contrary notwithstanding.

New trial.

- 19.—(1.) This Act and the Land Law (Ireland) Acts, 1881 and 1887, shall, notwithstanding anything contained in the fifty-eighth section of the former, be deemed to apply to any holding let to be used wholly or mainly for the purpose of pasture, if it shall appear
25 that such holding was originally laid down in pasture by the tenant thereof or his predecessors in title at his or their own expense.

Definitions.

- (2.) The term "improvement" as used in the ninth sub-section of the eighth section of the Land Law (Ireland) Act, 1881, shall
30 be construed to mean any work or agricultural operation executed on a holding, which being executed adds to the letting value of the holding, or any expenditure of labour or capital on a holding which adds to the letting value thereof and shall include tree, shrub, and osier plantations.

- (3.) The expression "predecessors in title" as used in this Act, and in the said Acts of 1881 and 1887, and in the Landlord and Tenant (Ireland) Act, 1870, shall be construed to mean predecessors in occupancy, where from the nature of the transmission or derivation of such occupancy to or from the successive occupiers, or from
40 any other circumstance, it shall appear to the court in which any proceedings under the said Acts or any of them shall be pending, that the justice of the case so requires.

[3.]

B

A.D. 1890. (4.) The tenant of any holding within the meaning of the fifty-seventh section of the Land Law (Ireland) Acts, 1881 and 1887, and of this Act shall be deemed for the purposes of the said Acts and of this Act as against the landlord of said holding to be in occupation of the same, notwithstanding that a portion of such holding is sub-let, provided that the sub-letting was made before the passing of the said Act of 1881, and that the tenant was not, prior to such sub-letting, prohibited in writing or by the terms of his lease from sub-letting such holding. Nothing herein contained shall be deemed to affect the rights under the said Acts or this Act of any person holding under such sub-letting.

This and Acts of 1881 and 1887 to be construed as one Act. 20. Except in so far as the said Acts of 1881 and 1887 are expressly altered or amended by this Act, this Act and the said Acts shall be construed together as one Act. Any words or expressions which are not hereby defined and are defined in the said Acts shall, unless there is something in the context of this Act repugnant thereto, have the same meaning as in the said Acts.

Repeal. 21. The sixth sub-section of the thirteenth section of the Land Law (Ireland) Act, 1881, and the seventh section of the Land Law (Ireland) Act, 1887, are hereby repealed.

Short title. 22. This Act may be cited as the Tenure and Occupation of Land (Ireland) Act, 1890.

Tenure of Land (Ireland).

A

B I L L

For the amendment of the Law relating
to the Tenure and Occupation of Land
in Ireland.

*(Proposed and Brought in by
Sir, Chairman, Mr. Foran, Mr. T. H. Kelly,
Mr. Carlin, Mr. Patrick O'Brien, Mr. Conry,
Mr. O'Neil, and Mr. Hayden.)*

*Ordered, by The House of Commons, to be Printed,
12 February 1880.*

PRINTED BY JOHN WATTS AND COMPANY, LTD.,
PRINTERS IN ORDINARY TO HER MAJESTY'S MOST EXCELLENT
MAJESTY, at the Crown Office, Whitehall, London, W.C.
Printed and Published by J. W. & Co., 10, Abchurch Lane, London, E.C. 4.

[Price 1s.]

[B. L.]